IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7938 OF 2004

Shri Kumar Harve..... Petitioner.

Versus

Smt. Kunda R. Khanvilkar..... Respondent.

Mr. M. L. Bansal for the Petitioner.

Mr. K.A.Bhatt for the Respondent.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 28TH SEPTEMBER, 2004.

P.C.:

Heard Advocate for the petitioner. Perused record.

2. The petitioner challenges the concurrent findings arrived at by both the courts below on the point of acquisition of alternative suitable residential accommodation by the petitioner and that being the ground for his eviction from the suit premises.

3. The challenge is only on the ground that both the courts below did not consider the issue regarding suitability of the alternative accommodation stated to have been acquired by the petitioner. Specifically, there was no plea raised by the petitioner, nor it was a specific contention of the petitioner that the alternative premises are not suitable for residence of the petitioner. Both the courts below upon analysing the evidence, which has been done in proper perspective, have arrived at a concurrent finding on the acquisition of the alternative premises by the petitioner and being suitable for his occupation.

4. Undoubtedly, the suit was filed for eviction of the petitioner on various grounds, apart from the ground relating to acquisition of alternative suitable accommodation. Referring to the finding in favour of the petitioner in relation to the failure on the part of the respondent to establish non-user of the suit premises, it was sought to be contended that that itself would have been sufficient to establish the contention of the petitioner that the alternative accommodation is not suitable for the occupation of

the petitioner and in the alternative accommodation only relations of the petitioner are residing. Merely because the petitioner has allowed his relatives or family members to reside in the suit premises and that the petitioner has not stopped use of the suit premises that by itself may not be sufficient to lead to the conclusion that the alternative premises acquired by the petitioner are not suitable for his accommodation. It was the duty of the petitioner to raise a specific plea in that regard and to establish the same and the petitioner having failed to do so, there is no case made out by the petitioner to interfere with the impugned judgment in writ jurisdiction under Article 227 of the Constitution of India.

5. The findings arrived at by the courts below are neither perverse nor contrary to the materials on record and therefore they do not warrant interference and hence the petition fails. The writ petition is, accordingly, rejected.

6. At the oral request of the learned Advocate for

the petitioner, time to vacate the premises is extended till 31st January, 2005, subject to the petitioner along with all the major persons residing in the premises filing undertaking before the Registrar (Judicial) of this Court assuring that they will deliver the vacant and peaceful possession of the suit premises on or before 31st January, 2005 and will not induct any third person nor create any third party interest therein till then. The undertaking to be filed within three weeks from today.

7. Issuance of certified copy expedited.

Sd/-

(R.M.S.KHANDEPARKAR, J.)